BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

LAXMAN BHATTARAI	)	
Claimant	)	
VS.	)	
	)	Docket No. 261,986
TACO BELL	)	
Respondent	)	
AND	)	
	)	
LEGION INSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

Respondent appeals the July 10, 2003 preliminary hearing Order of Administrative Law Judge John D. Clark. Claimant was granted benefits after the Administrative Law Judge determined that claimant was entitled to a handicapped-equipped van. Respondent contends that it is obligated to outfit a van for claimant should that be ordered, but objects to having to outright purchase the van, arguing the van is a means of transportation which, at times, is a necessity for all persons. It is only the handicapped modifications which are necessitated by claimant's injury and can, therefore, be considered treatment.

ISSUES

Would the providing of a handicapped-equipped van constitute medical treatment under K.S.A. 44-534a, therefore depriving the Appeals Board (Board) of jurisdiction in this appeal? If the providing of the handicapped-accessible van does not constitute medical treatment, did the Administrative Law Judge exceed his jurisdiction in ordering respondent to pay for same?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Board finds the Order of the Administrative Law Judge should be reversed.

Claimant suffered accidental injury on November 7, 2000, when he was shot in the neck during a robbery. As a result of that injury, claimant is a quadriplegic, undergoing substantial treatment and having reached a "medical plateau."

Claimant has determined that he is in need of transportation beyond that which has been provided by respondent to this point. Claimant requests, as a form of medical care, that he be provided a handicapped-accessible van in order to further his education and facilitate his ability to obtain additional employment in the future.

Mark Johansen, M.D., of the Craig Hospital in Englewood, Colorado, provided a letter dated May 9, 2003, recommending that claimant be allowed to obtain a van with appropriate handicap modifications. Respondent objects, arguing that the van is simply a mode of transportation, and respondent has been providing transportation for claimant during this entire time.

The Kansas Court of Appeals, in *Hedrick*,[1] has discussed the issue of transportation and whether it constitutes medical treatment. In *Hedrick*, the claimant requested that respondent be required to pay for the cost of upgrading her 1990 Geo to a larger 1989 Mercury Sable. The claimant produced medical evidence from her treating physician, Dr. Bernard Poole, which did indicate that she needed a vehicle which she could climb into and out of with less difficulty.

The appropriate version of K.S.A. 44-510(a) (the predecessor to the current version of K.S.A. 44-510h) states:

> It shall be the duty of the employer to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation to and from the home of the injured employee to a place outside the community in which such employee resides . . . as may be reasonably necessary to cure and relieve the employee from the effects of the injury.

The court, in *Hedrick*, went on to state that:

> [T]he natural and ordinary meaning of "medical treatment" is not so broad as to include an automobile purchased to afford an individual "independence in transportation." Moreover, the purchase of a car goes far beyond the limited transportation authorized by 44-510(a). Under the facts of this case, we conclude that medical treatment does not include the purchase of a car."[2]

In *Hedrick*, the court stated that *Hedrick* did not involve a paraplegic claimant seeking a specially equipped vehicle under the Workers Compensation Act. The court

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[1] *Hedrick v. U.S.D. No. 259*, 23 Kan. App. 2d 783, 935 P.2d 1083 (1997).

[2] *Hedrick* at 786.

noted that there was a split of authority among the various jurisdictions who have addressed that problem.

The Board has found no additional Kansas appellate cases dealing with this particular issue. The Board, however, has visited the issue on two separate occasions since *Hedrick*. In *Davidson,*[3] the Board was asked to determine whether a specially equipped van would be considered medical treatment. The Board, citing its earlier case in *Butler,*[4] held that "the van itself is not medical treatment or a medical apparatus, and, therefore, cannot be ordered paid by the respondent."

The Board, however, went on to hold, in *Butler*, that "[t]he costs associated with making the van handicapped accessible, however, do fit the definition of medical apparatus."

The Board, here, finds, consistent with its earlier rulings, that the providing of a van under these circumstances does not constitute medical treatment. Therefore, the Administrative Law Judge exceeded his jurisdiction in ordering respondent to provide a handicapped-equipped van and the July 10, 2003 preliminary hearing Order of Administrative Law Judge John D. Clark should be reversed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated July 10, 2003, should be, and is hereby, reversed.

IT IS SO ORDERED.

Dated this ____ day of September 2003.

BOARD MEMBER

c: W. Walter Craig, Attorney for Claimant
Richard J. Liby, Attorney for Respondent
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Director

[3] *Davidson v. Meadowbrook Lodge Nursing Home*, No. 210,158, 2000 WL 973222 (Kan. WCAB June 29, 2000).

[4] *Butler v. Jet TV*, No. 106,194, 1998 WL 229860 (Kan. WCAB Apr. 14, 1998).